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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE:

B-217039

DATE: April 26, 1985

MATTER OF:

T.S. Head & Associates, Inc.

DIGEST:

Protest against award is sustained where facts do not support public exigency finding under FAR § 15.202 which was used by agency as basis for not synopsisizing the procurement in the Commerce Business Daily.

T.S. Head & Associates, Inc. (T.S. Head), protests the award to Rodenberg's Floor Coatings, Inc. (Rodenberg), under request for proposals (RFP) No. F34650-84-R-0115 issued by the Department of the Air Force (Air Force) for removal and repair of the Chemical Resistant Urethane (CRU) floor coating in Building 230 at Tinker Air Force Base. T.S. Head protests that it was denied an opportunity to reply to the RFP since the procurement was not synopsisized in the Commerce Business Daily (CBD). We sustain the protest.

Under the Small Business Act, as amended, (15 U.S.C. § 637(e) (Supp. I 1983), and the Federal Acquisition Regulation (FAR), 48 C.F.R. § 5.201(b) (1984), the contracting officer generally is required to transmit a synopsis to the CBD for each proposed contract of \$10,000 and above. See generally Morris Guralnick Associates, Inc., B-214751.2, Dec. 3, 1984, 84-2 C.P.D. ¶ 597. However, in this case the contracting officer determined on September 10, 1984, that the requirement for CRU floor coating removal at Tinker Air Force Base was urgent; he therefore negotiated a contract under FAR, 48 C.F.R. § 15.202, which provides for negotiation of a contract where the public exigency will not permit the delay incident to formal advertising, and invoked the exception to the synopsis requirement provided by the FAR for "[u]nusual or compelling emergencies." See FAR, 48 C.F.R. § 5.202. Negotiations were accomplished on September 26, resulting in a contract award to Rodenberg on September 29, and notice of award was published in the CBD on October 24. The Air Force notified Rodenberg to proceed with contract performance on October 29, and performance of the contract was completed on December 4, 1984.

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T.S. Head protests that, since the Air Force did not synopsise the solicitation, it was wrongfully prevented from having knowledge of the procurement and an opportunity to compete.

In its report on this protest, the Air Force concedes that the length of time taken by the requiring activity to provide the urgency justification, as well as the fact that the contracting office did not issue the notice to proceed until 30 days after the date of award, are inconsistent with the public exigency standard set out at FAR, 48 C.F.R. § 15.202, which cautions that to use this authority the need must be compelling and of unusual urgency (as when the government would be seriously injured financially or otherwise, if the supplies or services were not furnished by a certain date, and if they could not be purchased by that date by means of formal advertising). The Air Force concludes that it could have expeditiously handled this procurement by formal advertising and still have complied with the synopsis requirements.

We agree with the Air Force that it should have synopsized its requirements and we therefore sustain the protest. However, since the contract was completed on December 4, 1984, corrective action by our Office is not possible. See Houston Fearless 76, B-209576, Apr. 15, 1983, 83-1 C.P.D. ¶ 412. We note, however, that the Air Force states that the pertinent major command has been advised of the improprieties in this procurement so that this deficiency will not be repeated in the future.

We sustain T.S. Head's protest.

for Seymour Efron
Harry R. Van Cleve
General Counsel